

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No.: EB-01-TP-399
)	
Joseph S. McCreary)	NAL/Acct. No. 200232700006
)	
Pensacola, Florida)	FRN 0006-9319-84

MEMORANDUM OPINION AND ORDER

Adopted: December 3, 2002

Released: December 5, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (“*Order*”), we deny the petition for reconsideration filed on August 21, 2002, by Joseph S. McCreary (“McCreary”). McCreary seeks reconsideration of the *Forfeiture Order*,¹ in which the Chief, Enforcement Bureau (“Bureau”), found him liable for a monetary forfeiture in the amount of \$5,000 for willful violation of Section 95.411 of the Commission’s Rules (“Rules”).² The noted violation involves McCreary’s attachment and use of an external radio frequency power amplifier as part of his Citizens Band (“CB”) radio station. For the reasons discussed below, we affirm the monetary forfeiture in the amount of \$5,000.

II. BACKGROUND

2. On March 11, 2002, agents from the Commission’s Tampa, Florida, Office (“Tampa Office”) traveled to Pensacola, Florida, to investigate complaints indicating that McCreary was operating a CB radio station with a 1,000 watt linear amplifier and was causing interference to home electronic entertainment devices. On the same date, the agents inspected McCreary’s CB station and observed that a linear amplifier was connected to the station’s CB transceiver. McCreary admitted to the agents that he had been operating his CB station with a linear amplifier attached and with a power of at least 20 watts.

3. On the basis of the foregoing observations, the District Director of the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”)³ on May 7, 2002, in the amount of \$5,000 to McCreary. McCreary did not respond to the NAL. On August 1, 2002, the Enforcement Bureau issued a *Forfeiture Order* to McCreary, affirming the forfeiture proposed by the NAL. In his request for reconsideration of the *Forfeiture Order*, McCreary asserted that: his linear amplifier had been disabled, he could receive but not make radio transmissions, and his station’s power was four watts. Additionally, McCreary stated that he would like to resolve the monetary forfeiture and offered to let the Commission take possession of his radio apparatus in lieu of payment of the forfeiture.

¹ 17 FCC Rcd 14554 (Enf. Bureau 2002)

² 47 C.F.R. § 95.411.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232700006 (Enf. Bur., Tampa Field Office, released May 7, 2002).

III. DISCUSSION

4. The Enforcement Bureau assessed the forfeiture amount in this case in accordance with Section 503 of the Communications Act of 1934, as amended (“Act”),⁴ Section 1.80 of the Rules,⁵ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Policy Statement*”). Section 503(b) of the Act⁶ requires that, in examining McCreary’s petition, the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

5. Section 95.411 of the Rules prohibits the attachment of radio frequency power amplifiers, including linear amplifiers, to CB transmitters. FCC agents observed that a linear amplifier was attached to McCreary’s CB transceiver. Furthermore, McCreary has admitted that he operated his CB station with a linear amplifier attached. We conclude that McCreary willfully violated Section 95.411 of the Rules.

6. McCreary claims he has taken steps to correct his violation of Section 95.411. However, complaints received during October 2002 indicate that McCreary may still be causing interference to home electronic entertainment devices. In any event, even if McCreary has corrected the violations, no mitigation is warranted. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”⁸

7. McCreary suggests the forfeiture could be resolved by the surrender of his radio apparatus. We disagree. McCreary’s surrender of his radio apparatus after being cited for the violation would simply be an additional corrective measure, which cannot be used to mitigate the forfeiture.

8. We have examined McCreary’s petition for reconsideration pursuant to the statutory factors set forth above, and in conjunction with the *Policy Statement* as well. As a result of our reconsideration, we conclude that McCreary has failed to provide sufficient justification for any change in the *Forfeiture Order*.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act,⁹ and Section 1.106 of the Rules,¹⁰ McCreary’s petition for reconsideration of the August 1, 2002, *Forfeiture Order* **IS DENIED** and the issuance of the \$5,000 forfeiture **IS AFFIRMED**.

⁴ 47 U.S.C. § 503.

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ See also *Radio Station KGV L, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

⁹ 47 U.S.C. § 405.

¹⁰ 47 C.F.R. § 1.106.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹¹ Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200232700006, and FRN 0006-9319-84. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹²

11. **IT IS FURTHER ORDERED THAT** this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to Joseph S. McCreary, 3305 Bayou Boulevard, Pensacola, Florida 32503.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹¹ 47 U.S.C. § 504(a).

¹² See 47 C.F.R. § 1.1914.